



FEDERAL ELECTION COMMISSION
Washington, DC 20463

Stephen M. Ryan
McDermott Will & Emery LLP
500 N. Capitol Street N.W.
Washington, DC 20001

MAY 10 2016

RE: MUR 7052
Thomas O'Gara

Dear Mr. Ryan:

On October 6, 2015, your client, Thomas O'Gara ("Respondent"), notified the Federal Election Commission ("Commission") *sua sponte* that he may have violated certain provisions of the Federal Election Campaign Act of 1971, as amended ("Act"). On April 26, 2016, the Commission determined to open a matter under review and found reason to believe that Respondent violated 52 U.S.C. § 30116(a)(1)(C). The Factual and Legal Analysis that sets forth the basis for the Commission's determination is enclosed.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. This matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and § 30109(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public. Please be advised that although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations, but is a voluntary step in the enforcement process that the Commission is offering to your clients as a way to resolve this matter at an early stage, and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that your clients violated the law.

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

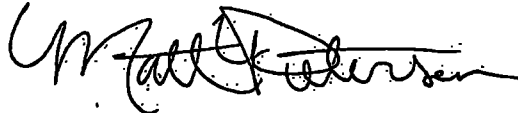
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If you are interested in engaging in pre-probable cause conciliation, please contact Saurav Ghosh, the attorney assigned to this matter, at (202) 694-1650 or (800) 424-9530, within seven days of receiving this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,



Matthew S. Petersen
Chair

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENT: Thomas O’Gara

MUR 7052

4 **I. GENERATION OF MATTER**

5 This matter was generated based on information ascertained by the Federal Election
6 Commission (“Commission”) in the normal course of carrying out its supervisory
7 responsibilities, *see* 52 U.S.C. § 30109(a)(2). Freedom Fund and Lance Kolbet in his official
8 capacity as treasurer (“Freedom Fund”), filed a *sua sponte* submission on October 6, 2015,
9 disclosing the receipt of unreported in-kind contributions in the form of unreimbursed event
10 expense payments.¹ Those payments were made by Thomas O’Gara, who as far back as 1998
11 hosted, and paid most of the expenses for, an event known as the “Hook & Bullet” at his home in
12 Idaho. In recent years, that event served at least partly as a political fundraiser for Freedom
13 Fund. O’Gara subsequently joined the *sua sponte* submission.

14 Based on the available information, the Commission has determined to open a matter
15 under review (“MUR”) and find reason to believe that Thomas O’Gara violated 52 U.S.C.
16 § 30116(a)(1)(C) by making excessive in-kind contributions to Freedom Fund.

¹ Freedom Fund is the leadership political action committee of U.S. Senator Michael Crapo (Idaho). *See Sua Sponte* Submission (Oct. 6, 2015) (“Submission”) and Supplemental Letter from Stephen Ryan, McDermott Will & Emery, Counsel for Respondents (Dec. 14, 2015) (“Supplemental Letter”). Senator Crapo’s principal campaign committee is Mike Crapo for U.S. Senate (“the Campaign”).

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 1. O’Gara’s Unreimbursed Payments for Fundraising Event Expenses

4 Beginning in 1998, O’Gara hosted an annual event, later called the Hook & Bullet, every
5 summer at his home in Idaho.² The event was originally an informal barbecue for O’Gara’s
6 family and friends, including Senator Crapo. The attendees in the event’s early years made no
7 contributions to Freedom Fund, and attended as O’Gara’s personal guests. O’Gara apparently
8 paid all expenses related to the event when it was a purely social gathering.³ From its inception,
9 the event featured food and drink, and as it grew in size and scope, it featured a variety of
10 outdoor activities and other entertainment, including fishing, trap and skeet shooting, horseback
11 riding, and a live local band.⁴

12 At some point in the early 2000s, the Hook & Bullet also became a fundraising event for
13 political committees linked to Crapo.⁵ The Respondents characterize the Hook & Bullet as
14 “somewhat of a hybrid” community gathering and fundraising event, in that the attendees were a
15 mixture of O’Gara’s personal guests and political supporters of Crapo and the Crapo-linked
16 committees.⁶ While Freedom Fund was not originally involved in planning or paying for the
17 event, it became involved as the event became a fundraiser. The 2011 and 2012 events benefited

² See Supp. Letter at 4.

³ *Id.*

⁴ *Id.* at 5; see Submission at 1.

⁵ The Respondents do not state specifically when this transition occurred: “Upon information and belief, we believe this occurred in the early 2000’s.” Supp. Letter at 5 n.2.

⁶ *Id.* at 5.

1 Freedom Fund.⁷ In each of those years, Freedom Fund paid for the shooting expenses, but
2 O'Gara paid for all other expenses, including the party rentals, band, horse rentals, and catering
3 costs.⁸ Through poor oversight, and because the Freedom Fund apparently did not receive timely
4 invoices documenting O'Gara's payments, it did not reimburse O'Gara for these event expenses.
5 It also never reported these payments as in-kind contributions by O'Gara in its disclosure reports
6 filed with the Commission.⁹ The table below provides a summary of the unreimbursed event
7 expenses paid for by O'Gara:¹⁰

Event	Expense	Amount
2011 H&B Event (Freedom Fund)	Kim Stocking Band	\$1,000.00
	Barbara's Party Rentals	\$1,814.00
	Tyler Petersen Horse Rentals	\$2,200.00
	Full Moon Catering	\$13,664.60
	2011 TOTAL	\$18,678.60
2012 H&B Event (Freedom Fund)	Kim Stocking Band	\$300.00 ¹¹
	Barbara's Party Rentals	\$1,904.55
	Tyler Petersen Horse Rentals	\$2,400.00
	Full Moon Catering	\$19,324.22
	2012 TOTAL	\$23,928.77
2011-2012 H&B Events	GRAND TOTAL	\$42,607.37

⁷ See Submission at 1.

⁸ See *id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ The *sua sponte* submission indicated that in 2012, O'Gara paid \$1,000 to the band. However, according to Respondents' supplemental informational letter, invoices showed that the band cost \$1,500 in 2012 but that amount was included in the catering total. O'Gara paid the band a separate, additional fee of \$300, not the \$1,000 that was disclosed in the *sua sponte* submission. By that point, however, Freedom Fund had already reimbursed O'Gara \$24,628.77 for 2012, based on the \$1,000 estimate of the band payment, when it actually owed O'Gara only \$23,928.77 for that year's event, based on the actual payment of \$300 for the band. In other words, Freedom Fund paid O'Gara \$700 more than he spent on the 2012 event expenses.

1 The *sua sponte* submission and the supplemental letter include documentation supporting
2 these figures.¹²

3 2. Discovery and Disclosure of the In-Kind Contributions

4 In December 2010, the Campaign and Freedom Fund learned about an unreported loan of
5 the Campaign’s funds to a fraudulent real estate company — which eventually led to an
6 unrelated *sua sponte* submission — and, realizing that their oversight regime contained serious
7 flaws, they implemented additional recordkeeping and compliance policies.¹³ Susan Wheeler,
8 who became the Washington, D.C., Chief of Staff for Senator Crapo in 2011, found that although
9 the committees were spending significant amounts on the Hook & Bullet event, they did not have
10 documentation for certain expenses, including horse rentals, catering, music, and party rentals.¹⁴
11 Wheeler then began an inquiry, which included research by the law firm representing the
12 Respondents in this matter, Barracks Row Strategies, the committees’ fundraising firm, and
13 O’Gara’s personal accountant.¹⁵ The inquiry revealed that O’Gara had paid certain event
14 expenses and had not been reimbursed by the committees, resulting in unreported in-kind
15 contributions by O’Gara to the committees.¹⁶

¹² The Respondents’ methodology for calculating these estimated figures can be found in the submission.
See Submission at 3–4.

¹³ See *Sua Sponte* Submission at 2 (Apr. 29, 2013), Pre-MUR 556 / ADR 725 (Mike Crapo for U.S. Senate, *et al.*) (explaining that Jacob G. Ball, Crapo’s former campaign manager, departed the Campaign in December 2010 and informed the committee of the apparent fraud, prompting the committee to retain outside counsel to investigate). The oversight policies that the committees implemented after discovering the unreported loan include requiring express authorization by at least two senior campaign staff members before making any disbursement from committee accounts, having at least one committee staff member without disbursement authority review bank statements and monitor financial transactions, and reconciling bank statements with accounting files and campaign finance disclosure reports weekly or monthly. The committees note that these policies “highlighted inadequacies” in recordkeeping and reporting that prompted them to track down the missing O’Gara invoices. Supp. Letter at 2–3.

¹⁴ See Supp. Letter at 2.

¹⁵ See Submission at 2–3; Supp. Letter at 2–3.

¹⁶ See Submission at 2–3.

1 3. Remedial Steps

2 After Freedom Fund concluded its inquiry, Freedom Fund reimbursed O’Gara for
3 expenses relating to the 2011 and 2012 events.¹⁷ Furthermore, the committees sought to prevent
4 future similar violations by implementing new policies for fundraising events: the committee’s
5 staff and outside fundraising personnel now engage directly with vendors for the Hook & Bullet,
6 rather than allowing O’Gara to pay for expenses and later be reimbursed.¹⁸

7 **B. Legal Analysis**

8 Under the Federal Election Campaign Act of 1971, as amended (“Act”), a contribution
9 includes “any gift, subscription, loan, advance, or deposit of money or anything of value made
10 by any person for the purpose of influencing any election for Federal office.”¹⁹ “Anything of
11 value” includes all in-kind contributions, such as “the provision of any goods or services without
12 charge or at a charge that is less than the usual and normal charge for such goods or services.”²⁰
13 At the relevant times, the Act prohibited any person from making aggregate contributions to a
14 candidate for federal office, or a candidate’s authorized committee, in excess of \$2,400 per

¹⁷ Freedom Fund paid O’Gara \$18,678.60 for the 2011 event expenses and \$24,628.77 for the 2012 event expenses. Submission at 4. As noted above, however, in their supplemental letter the Respondents point out that O’Gara was actually over-reimbursed \$700 for the 2012 event, *see supra* note 13.

¹⁸ Respondents claim that although the event was supposed to be held at O’Gara’s Idaho ranch in August 2013, Freedom Fund cancelled the event due to widespread forest fires in Idaho. *See* Submission at 4 n.4. They also indicated in an e-mail from counsel that O’Gara did not spend any funds in connection with the cancelled 2013 Hook & Bullet event, and that Freedom Fund hosted, and paid for, a substitute fundraising event at the Greenbriar Resort in White Sulphur Springs, West Virginia; Freedom Fund reported expenditures of \$38,363.77 related to that event on its 2013 Year-End Report. *See* Freedom Fund 2013 Year-End Report at 69 (Jan. 31, 2014). Respondents note that the Hook & Bullet event was held again in 2014 and 2015, benefiting Freedom Fund both years, and that Freedom Fund paid for all event-related expenses directly and reported those expenditures to the Commission. They also claim that since 2010, no other fundraising event for either committee has raised compliance issues. *See* Submission at 4.

¹⁹ 52 U.S.C. § 30101(8)(A)(i). The Act’s definition of contribution also encompasses the “payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge for any purpose.” *Id.* at § 30101(8)(A)(ii).

²⁰ 11 C.F.R. § 100.52(d)(1).

1 election, and prohibited any person from making aggregate contributions to any other political
2 committee in excess of \$5,000 per calendar year.²¹

3 The record here indicates that O'Gara made in-kind contributions by paying for event-
4 related expenses, in excess of the relevant contribution limits, that benefited Freedom Fund, for
5 which Freedom Fund did not reimburse him. Within the five-year statute of limitations, O'Gara
6 made contributions in 2011 and 2012 by making unreimbursed payments for Freedom Fund
7 fundraising event-related expenses.

8 The Commission finds reason to believe that Thomas O'Gara violated 52 U.S.C.
9 § 30116(a)(1)(C) by making excessive in-kind contributions to Freedom Fund in connection with
10 the 2011 and 2012 Hook & Bullet events.

²¹ 52 U.S.C. § 30116(a)(1)(A), (C); *see* 11 C.F.R. § 110.1(b). The limit for individual contributions to any other political committee in 2011 and 2012 was \$5,000 per calendar year. *See* Contribution Limits for 2011–2012, <http://www.fec.gov/info/contriblimits1112.pdf>.